

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2003-0555, State of NH v. Jason J. Porter, the court on October 20, 2004, issued the following order:

Following a jury trial, the defendant, Jason J. Porter, was convicted of operating a vehicle after certification as a habitual offender. See RSA 262:23 (2004). On appeal, he contends that the trial court erred, after conducting an in camera review, in failing to disclose information in a police personnel file. We affirm.

Absent an unsustainable exercise of discretion, we will not reverse a trial court's determination on the discoverability of evidence. State v. Sargent, 148 N.H. 571, 572-73 (2002). In this case, the trial court determined that the personnel file contained no evidence that would undermine the credibility of one of the arresting officers. See State v. Gagne, 136 N.H. 101, 104 (1992) (trial court must permit defendants to use privileged material if essential and reasonably necessary to permit counsel to adequately cross-examine for the purpose of showing unreliability or bias).

Having conducted our own review of the records, we find the trial court's exercise of discretion sustainable. The records predate the arresting officer's employment at the time of the arrest and contain no information about the defendant or his arrest. Moreover, even if we assume without deciding that Gagne would require disclosure of any portion of the records, we find any error in the trial court's ruling to be harmless. See State v. Goodale, 144 N.H. 224, 232 (1999) (to determine whether error was harmless court considers strength of State's evidence presented at trial and character of excluded evidence, including whether it was inconsequential in relation to State's evidence). The defendant was charged with operating after certification as a habitual offender. The evidence consisted of two police officers and a civilian police observer, all of whom testified that they saw the defendant operating the vehicle and then observed him change seats with his female passenger when stopped by the police. In addition, the seat change was captured on the video camera in one of the cruisers. Given the strength of the alternative evidence, we find any error in the trial court's ruling to be harmless.

Affirmed.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox,
Clerk**

In Case No. 2003-0555, State of NH v. Jason J. Porter, the court on October 20, 2004, issued the following order:

Page Two of Two

Distribution:

Clerk, Cheshire County Superior Court 02-S-0019

Honorable John P. Arnold

Honorable Robert J. Lynn

Alexander E. Roth, Esquire

Nicholas P. Cort, Esquire

Christopher M. Johnson, Esquire

Marcia McCormack, Supreme Court

Loretta S. Platt, Supreme Court

Irene Dalbec, Supreme Court

Case Manager

File